

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LAC HOILIEN, an individual,)	CIVIL NO. 10-00760 JMS/BMK
)	
Plaintiff,)	ORDER ADDRESSING
)	DEFENDANTS' MEMORANDUM
vs.)	IN OPPOSITION TO PLAINTIFF'S
)	VOLUNTARY DISMISSAL, DOC.
BANK OF AMERICA, a Business)	NO. 98, AND DIRECTING
Entity, form unknown, et al.,)	CLOSURE OF THE CASE FILE
)	
Defendants.)	
)	
)	

**ORDER ADDRESSING DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S VOLUNTARY DISMISSAL, DOC. NO. 98,
AND DIRECTING CLOSURE OF THE CASE FILE**

The court has reviewed Defendants' Memorandum in Opposition to Plaintiff's Voluntary Dismissal Without Prejudice [Doc. No. 98]. As discussed at the hearing on May 7, 2012, Defendants were given leave to address whether there might be an exception to the apparently clear language of Federal Rule of Civil Procedure 41(a)(1)(A)(i), which provides that a plaintiff may voluntarily dismiss an action without prejudice without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment."

Defendants, however, did not follow the court’s instruction to address Rule 41(a)(1)(A)(i). And apparently for good reason -- the Rule “confers on the plaintiff ‘an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’” *Am. Soccer Co. v. Score First Enters.*, 187 F.3d 1108, 1110 (9th Cir. 1999) (quoting *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997)). The Rule “leaves no role for the court to play.” *Id.* It “does not authorize a court to make a case-by-case evaluation of how far a lawsuit has advanced to decide whether to vacate a plaintiff’s voluntary dismissal.” *Id.* at 1112. The voluntary dismissal “must be given effect” and this court is “without jurisdiction to rule on the merits of the case.” *Id.* (citations omitted).

It is undisputed that neither an answer nor a motion for summary judgment has been filed. Accordingly, under Rule 41(a)(1)(A), the action is dismissed without prejudice and without a court order. The pending Motion to

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Dismiss, Doc. No. 75, is denied without prejudice as MOOT. The Clerk shall close the case file.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, May 11, 2012.



/s/ J. Michael Seabright
J. Michael Seabright
United States District Judge

Hoilien v. Bank of Am., et al., Civ. No. 10-00760 JMS/BMK, Order Addressing Defendants' Memorandum in Opposition to Plaintiff's Voluntary Dismissal, Doc. No. 98, and Directing Closure of the Case File